

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES NEW YORK OFFICE

ALARIS HEALTH BOULEVARD EAST

and

Case 22–CA–268083

1199 SEIU UNITED HEALTHCARE
WORKERS EAST

Michael P. Silverstein, Esq., of Newark, New Jersey,
for the General Counsel.

William S. Massey, Esq., of New York, New York,
for the Charging Party.

David F. Jasinski, Esq., of Newark, New Jersey,
for the Respondent.

DECISION

STATEMENT OF THE CASE

KENNETH W. CHU, Administrative Law Judge. This case was tried remotely in a video hearing on November 1, 2021, pursuant to a consolidated complaint issued by Region 22 of the National Labor Relations Board (NLRB) on February 23, 2021.¹

Six Respondents were named in the consolidated complaint.² The second amended complaint, dated August 30, 2021, named only Alaris Health at Boulevard East (GC Exh. 1 (d) and (m)).³

The second amended complaint alleges that the Respondent Alaris Health at Boulevard East (Respondent or Alaris) unilaterally rescinded, reduced and discontinued wage increases in April 2020 without first notifying the Union or providing the Union with an opportunity to bargain. The General Counsel alleges that the monetary increases for the unit

¹ All dates are in 2020 unless otherwise noted.

² The named Respondents in the consolidated complaint were Alaris Health Boulevard East, Alaris Health at Castle Hill, Alaris Health at Hamilton Park, Alaris Health at Harborview, Alaris Health at Rochelle Park, and Alaris Health at the Atrium. The six nursing facilities were under the corporate umbrella name of Alaris Health.

³ The General Counsel's exhibits are identified as "GC Exh." There were no hearing exhibits for the Respondent. The posthearing brief of the General Counsel is identified as "GC Br." and the Respondent as "R. Br." The hearing transcript is referenced as "Tr."

employees were wage increases while the Respondent maintained that the increases were one-time bonuses with specific start and end dates.⁴

The complaint also alleges that on about September 4, 2020, the Union made an information request necessary for the union's performance of its duties as the exclusive collective-bargaining representative of the unit employee and that the Respondent has failed and refused to furnish the Union with the information requested (GC Exh. 1(m) at pars. 8, 9, 11, 12 and 13). By the conduct described above, the amended complaint alleges that the Respondent violated Section 8(5) and (1) of the National Labor Relations Act (Act).

The second amended complaint addressed the amount of backpay owed by the Respondent to each unit employee when the monetary increases were granted and subsequently reduced and eliminated (GC Exh. 1(n) at 4). The General Counsel moved for partial summary on November 1, 2021, after the Respondent failed to provide a basis for the general denials in its answer and failed to detail an alternative backpay calculation as required under Section 102.56(b) and (c) of the Board's Rules and Regulations (GC Exh. 21). At the hearing, the Respondent was provided with another opportunity to submit an opposition to the motion and to respond to the compliance specification (Tr. 164). As of the date of this decision, no response to the partial summary judgment motion was filed by the Respondent.

On the entire record, including my assessment of the witnesses' credibility⁵ and my observations of their demeanor at the hearing and corroborating the same with the adduced evidence of record, and after considering the briefs filed by the General Counsel and the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION AND UNION STATUS

The Respondent Alaris Health at Boulevard East has been a domestic corporation, with an office and place of business located in Guttenberg, New Jersey, until about November 15, 2020, and has been a nursing home and rehabilitation center engaged in providing inpatient medical care. The Respondent derived gross revenues in excess of \$100,000 in conducting its operations annually until about November 15, 2020, and has annually purchased and received goods valued in excess of \$5000 from points outside the State of New Jersey until about November 15, 2020 (GC Exh. 1(n) par. 2(a-c)). In its answer, the Respondent admits to par. 2 of the second amended complaint (GC Exh. 1(p)). As such, I find, that the Respondent is an

⁴ In my findings of fact, I will portray the monetary increases as either a "wage increase" or "bonus" as characterized by the parties.

⁵ Witnesses testifying at the hearing included William S. Massey, Sherry McGhie and Jennifer Puleo.

employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and has been a health care institution within the meaning of Section 2(14) of the Act.

The Union, 1199 SEIU United Healthcare Workers East, is and has been a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

During the relevant period of time, Respondent was an inpatient nursing home and medical care facility. The Respondent ceased operations on about November 15, 2020. At all material times, 1199 SEIU United Healthcare Workers East has been the exclusive collective-bargaining representative of the following unit within the meaning of Section 9(b) of the Act:

All CNAs, dietary, housekeeping, recreational aides, cooks, and all other employees excluding professional employees, registered nurses, LPNs, confidential employees, office clerical employees, supervisors, watchmen and guards.

The Respondent and union collective-bargaining relationship was embodied in an agreement from April 1, 2010, through March 31, 2014. At the time of the agreement, the Respondent was known as Palisades Healthcare Center and had been renamed as Alaris Health Boulevard East (GC Exh. 2; Tr. 19, 20).

Due to the national COVID-19 pandemic in early spring 2020, the State of New Jersey implemented a state-wide shelter-in-place mandate affecting most governmental activities and commercial businesses, including the nursing home industry. While most employees were permitted to work from alternate locations, first responders and essential workers, continued to commute to their job sites. To their credit, unit employees continued with their responsibilities in protecting the health and wellbeing of patients at the Alaris facility. On March 30, the Union sent a letter to Francine Sokolowski, the administrator of the Alaris Health at Boulevard East facility at the time. The letter encouraged a proactive relationship between the Union and the Respondent to address the unique problems caused by the pandemic. In the letter, the Union requested clear policies and guidelines on dealing with COVID-19 related issues at the facility, such as implementation of an COVID-19 outbreak response policy; quarantine guidelines of affected employees by the virus; providing the Union with a directory of unit employees with phone numbers, home addresses, and emails addresses; a relaxation of grievance and arbitration time periods due to the lack of union access to the facility; and finally, a reminder to the Respondent not to change wages, hours, benefits, and other terms of employment without prior notice to the Union and an opportunity to bargain over any changes. The letter was signed by Milly Silva, the Union's executive vice-president (GC Exh. 3).

At the hearing, William S. Massey (Massey) testified that he is a labor lawyer and had represented the Union since 2004. He stated that the letter was prepared by his law firm to remind the Respondent that the Union was still active at the facility and to ensure that the Union be informed and given an opportunity to bargain before any changes in terms and conditions of employment are made. Massey said the letter served to address the lack of access of the Union

to the nursing home because of the state-wide lockdown. He said that Sherry McGhie served as the union organizer or staff representative at the nursing home at the time (Tr. 22–25; 66–68).

a. The Respondent's April 1 Bonus memo to all Alaris Staff

On April 1, a memo, from Avery Eisenreich on behalf of Alaris Health,⁶ informed all employees in the Alaris Health care system that the Respondent was taking steps to ensure the safety of the workers and wanted to recognize the hard work of the healthcare workers on the front line of the pandemic (GC Exh. 4). The memo stated that:

Accordingly, effective April 2, and thru at least April 30, we will be providing all our staff working in our centers a special COVID19 hourly rate bonus equal to 25% of their current hourly rate. The special hourly bonus will apply to all worked hours (excluding any paid-time-off pay) thru April 30.

Massey testified that he was informed after an employee at another Alaris nursing home told a union representative about the memo. Massey thought he heard about the memo from the Union on April 1 “. . . and may have received the screenshot of the notice later that day. Maybe I received it the next day” (Tr. 72). Massey testified that he never received the memo from Eisenreich and none of union officials were provided with the memo directly from the Respondent (Tr. 27–29, 69, 70).

Sherry McGhie (McGhie) testified that she was and is the Union's administrative organizer and was the shop organizer at the Alaris Health at Boulevard East facility (Tr. 103, 104). She stated that a worker and union delegate, Gwen Russell, at the Alaris Harborview facility, sent a screenshot of the April 1 memo in a text on April 1 to her. McGhie denied that she received a copy of the April 1 memo from any Alaris manager or supervisor (Tr. 105, 106).

In response to the memo, Massey sent an email to David Jasinski (Jasinski), who was and is representing the Respondent in labor employment matters. The email was dated April 1 and stated that Massey was informed by the Union of the 25 percent wage increase effective tomorrow (April 2) at the six nursing homes and that the Union agreed with the increase. Although the April 1 memo categorized the increase as an hourly rate bonus, Massey called it a wage increase in his email to Jasinski. Massey asked that Jasinski confirm this understanding. Massey testified that he was not aware of the cut-off date of April 30 at the time he sent the email to Jasinski (GC Exh. 5; Tr. 76). By letter dated April 2 (GC Exh. 6), Jasinski wrote Massey the following:

Dear Bill:

As you are all too aware, each one of these facilities is in the epicenter of the Covid-19

⁶ It was alleged in the second amended complaint that Avery Eisenreich was the Respondent's owner and supervisor within the meaning of Sec. 2 (11) of the Act (GC Exh. 1(n) par. 3). This was denied in the Respondent's answer to the complaint but subsequently stipulated by the Respondent as admitted, as noted below.

Pandemic—the likes of which no one has ever experienced.

Administration and its staff are dealing with and making critical real-life decisions every minute of every day. They cannot, and will not be distracted because there is too much at risk.

The Facilities' goals are single minded and everyone is focused on it – provide the best health care for our residents and continued safety for them and our staff. Let me be as clear as possible. We will not be deterred by anyone or anything. We will do what is necessary to maintain these goals. The temporary increase for our employees is well within our management rights. It was solely to recognize the outstanding efforts of our dedicated staff.

During this global emergency, this Administration should not have to use precious time to justify its well-meaning actions and should not be distracted from the day to day challenges this crisis has created.

We make absolutely no apologies for our actions, and will continue to do what we believe is right for our residents and our employees.

I will be happy to address your concerns. For now, please allow the Administration to do their critical work.

Massey testified that he disagreed with Jasinski's assertion in the letter that granting the monetary increase was a management right of the employer. Obviously, Massey did not disagree with the increase but did testify that "... the wage increases unilaterally is not law, and was not permitted by the expired CBA, or by the National Labor Relations Act" (Tr. 33). Massey acknowledged in testimony that Jasinski's letter stated that the increase was temporary (Tr. 78).

In response to letter, Massey emailed Jasinski on April 2 that he was taken aback by the tone of the letter and to clearly remind Jasinski that the Union is entitled to notice and an opportunity to bargain with the Respondent before any changes, which included any modifications to the already implemented and agreed upon increases (GC Exh. 7; Tr. 34, 35). Massey testified that Jasinski did not respond to his April 2 email (Tr. 37).

b. The Respondent's April 7 Bonus Memo to the Nursing and Respiratory Staff

On April 7, Eisenreich distributed a memo to all nursing and respiratory staff and stated that in appreciation for their work at the various nursing homes (which included Alaris Health at Boulevard East), the nursing and respiratory staff will receive a COVID-19 hourly rate bonus equal to 100 percent of their currently hourly rate, effectively immediately and through April 30. The hourly bonus will apply to all worked hours (excluding sick or benefit time) (GC Exh. 8).

Massey testified he has seen the April 7 memo after receiving a copy from the Union. He noted that a bargaining unit employee from another nursing facility had received the memo at another Alaris nursing facility and forward a picture of the memo to the Union. Massey denied

receiving the memo from Jasinski or that any union officials had received the memo directly from the Respondent (Tr. 37–39). McGhie denied receiving this memo (Tr. 106).

On the same day, Massey emailed Jasinski about the April 7 memo. He informed Jasinski that he was made aware of the 100 percent wage increase for all nursing employees at the Alaris at Hamilton Park. Massey again referenced the hourly rate bonus in the April 7 memo as a wage increase. Massey believed in his email that the 25 percent wage increase was on top of the already implemented 100 percent wage increase that was previously announced on April 2. Massey again reminded Jasinski of the Respondent's obligation to inform the Union and provide an opportunity to bargain over the changes, including any modifications to the already implemented agreed to increases (GC Exh. 9). Massey followed his April 7 email with another email to Jasinski on April 8, informing Jasinski that he was now informed that the Respondent's April 7 memo had also applied to the remaining five nursing facilities, including Alaris Health at Boulevard East. Massey testified that the Union had consented to the increase. Massey subsequently understood that the 100 percent was a modification to replace the 25 percent and not a 100 percent increase on top of the initial 25 percent increase (GC Exh. 10; Tr. 40, 41, 80–82). There were no replies from Jasinski to Massey's April 7 or 8 emails.

c. The Respondent's April 29 Revaluation Memo of the Bonus Program

In a memo dated on April 29, Eisenreich addressed all the staff at the six nursing facilities. He thanked the dedication and commitment of the staff during the COVID19 crisis and the loss suffered by many staff members due to the virus (GC Exh. 11). Eisenreich stressed the need to balance the desire to reward the staff with the need to ensure uninterrupted full salaries and benefits to all. To maintain the financial viability of the nursing facilities, Eisenreich referred to his April 7 memo that stated there would be a revaluation of the bonus program by April 30. The April 29 memo made the following modifications:

Effective May 1st, the 100% bonus for Nurses, CNA's and Respiratory Therapists will be reduced to a 25% hourly bonus for hours worked through May 14th, which is consistent with the bonus received by all staff at our Centers. During this period, we will continuously review our ability to meet all obligations and we will update our Team Members prior to May 14th.

Massey testified that he learned of the April 29 memo several months after it was sent out by Eisenreich and was fairly certain that the Union never received a copy. He stated that he received a copy from Jasinski in late 2020 (Tr. 44–46). McGhie testified she received the April 29 memo as a screenshot in a text sent by union delegate Russell at the Alaris Harborview facility. McGhie testified that the April 29 memo was not posted at Alaris Health at Boulevard East and she was never provided a copy directly from that facility's managers (Tr. 107–109).

d. The Respondent's May 13 Memo Revaluation of the Bonus Program

On May 13, Eisenreich sent out another memo that stated it was a follow-up to the April 29 memo. The May 13 stated the following:

Our April 29 memo indicated reevaluation of our bonus program on May 14. Starting May 17, the 25% bonus payment for hours worked will be limited to "Direct Nursing Providers" only. This includes all RNs, LPNs, CNA's, and QA CNAs. This 25% bonus for Direct Nursing Providers will continue until May 31, 2020, at which point we are optimistic that the peak of this pandemic will have passed. As of May 17, all other employees will return to their normal hourly rate. The prior bonus program will continue to be in effect until May 17.

Massey did not recall when he received a copy of the May 13 memo and believed that the Union did not receive that memo (GC Exh. 12, Tr. 46). McGhie confirmed that the Union did not receive a copy of the April 29 memo or the follow up memo of May 13 from the facility's managers, but testified that a union delegate at another facility screenshot the two memos to her (Tr. 110).

e. The Respondent's May 29 Memo Modifying the Bonuses to the Nursing Staff

Eisenreich followed-up his May 13 memo with another memo on May 29. He reminded all staff that the May 13 memo stated there would be a further modifications of the bonus by May 31. As such, the May 29 memo stated that the 25 percent bonus to RNs and LPNs will be reduced to 10 percent effective on June 1 through 15. The May 29 memo also stated that the RNs and LPNs would return to their tradition pay rate after June 15 (GC Exh. 14). Massey sent an email to Jasinski on May 15 after the Union had received reports from unit employees that they had lost their 100 percent bonus. Massey testified that the unit employees "... at some six Alaris facilities, that they had lost the 100% wage increase" (GC Exh. 13; Tr. 47; 83). His email protested the rescission of the 100 percent wage increase and stated the following:

The Union has learned from employees that on or about the beginning of this month, the above 6 Alaris facilities unilaterally rescinded the 100% wage increases for all nursing employees that were implemented, and subsequently consented to by the Union on April 7 and 8. As you know, there is a union at each of these facilities, and changes to terms and conditions of employment (such as wages) cannot be made unilaterally. Rather, they must be negotiated, after providing the Union with advance notice and a meaningful opportunity to bargain.

If Alaris wishes to modify terms and conditions of employment, (including, but not limited to the aforementioned wage increases), it should direct any proposals to Union Vice President Leilani Montes and/or to myself. In the meantime, we expect and insist that Alaris restore the recently rescinded increases, make employees whole, and refrain from making any unilateral changes, particularly reductions to employees' pay. Thank you for your attention to this matter.

Massey testified that the Union did not received a copy of the memo; did not agreed to the reduction; and, at no time did the Respondent offered to bargain over the reduction or communicate any proposals on the wage reduction (Tr. 51 52; 85-87). McGhie believed she received the May 29 memo between June 10-12 in a phone screenshot from a union delegate at another Alaris facility. McGhie never received the May 29 memo directly from any management officials (Tr. 111, 112).

Massey sent a second email on June 2 that referenced the LPNs at the 6 Alaris facilities. His June 2 email to Jasinski noted the earlier rescission of the “. . . 25% wage increases for all employees,” but now complained about the LPNs’ 25 percent wage increase that was reduced to 10 percent. Massey stated that the union was willing to bargain over the changes and demand that the employer refrain from making any additional unilateral changes (GC Exh. 15).

Massey testified he was mistaken that the May 29 memo (GC Exh. 14) called for the reduction of the CNAs’ wages from 25 percent to 10 percent (similar to the LPN reduction). Instead, the May 29 memo did not reduce the CNAs monetary benefits and remained at 25 percent (Tr. 55). Massey did not receive a reply from Jasinski on his June 2 email. Massey testified that the Respondent never communicated any bargaining proposals over the changes in the wage increases to the unit employee (Tr. 55, 56).

f. The Respondent’s July 20 Memo Reducing the CNAs’ Monetary Increases

On July 20, Eisenreich issued another memo to the Alaris Health staff. He stated that Alaris had re-evaluated the COVID-19 related bonus given to the CNAs in the May 29 memo and stated that the 25 percent bonus for hours worked reflected in the May 29 memo will now be reduced to \$1.50 extra per hour for all hours worked, effective on July 26. The CNAs’ prior 25 percent bonus was eliminated (GC Exh. 16).

Massey testified that he received a copy of the memo from the Union after an employee at a different facility sent a screenshot of the memo to the Union. He denied receiving the notice from Jasinski or from the employer (Tr. 56, 57). McGhie testified that, again, a union delegate at a different Alaris nursing facility had screenshot the memo to her on about July 23. She denied received a copy from the administrator or another manager at Alaris Health at Boulevard East (Tr. 112, 113).

In response to this reduction, Massey emailed Jasinski on July 24 and summarized the Union’s position that the monetary benefits given to the unit employees are in fact wage increases and he complained to Jasinski that the wage reductions were done unilaterally and without the approval by the Union. Massey stated in his email that the Union is willing to negotiate over the reductions but the Respondent must maintain the wage increases as the status quo in the interim. Massey testified that Jasinski did not reply to his email (Tr. 58-60; GC Exh. 17).

On November 6, Jasinski wrote to Massey that it was in the best interest of all involved to provide bonuses to the Alaris staff during the pandemic and requested the Union to reconsider the filing of an unfair labor practice charge (presumptively after the bonuses were rescinded by the Respondent) (GC Exh. 20; Tr. 96, 97, 101).

g. The Union’s Information Request

On about September 4, the Union filed a class action grievance on behalf of the unit employees at Alaris (previously known as Palisades) for unpaid medical invoices and the cancellation of their health insurance benefits. Sherry McGhie (McGhie) sent an email on

September 4 to Francine Sokolowski, the administrator for the nursing facility, regarding the grievance (GC Exh. 18). On September 8, McGhie sent a second email to Sokolowski, captioned "Information Request," and attached a copy of a request for information dated September 4 and addressed to Sokolowski. Massey testified that he followed-up on the McGhie September 8 email with his own email to Jasinski on September 23. Massey stated that attached to his email to Jasinski was the information request of September 4 from McGhie to Sokolowski (Tr. 61–63; GC Exh. 19). The Union requested the following information on the pending grievance:

1. The files that show names and date of member covered as of March 1, 2020.
2. The summary plan and description for health insurance.
3. The summary benefit description for health insurance.

The Union requested that the information be provided by September 14. Massey testified that the Union did not receive a reply on the information request from Sokolowski and he did not receive a response from Jasinski (Tr. 63, 64).

McGhie testified that the Union filed the grievance because unit members had accumulated hospital bills that were not being covered by their health insurance. McGhie said she gave copies of the hospital invoices to administrator Sokolowski but received no response from her or any other management official. She stated that her next step was to file the grievance (Tr. 113, 114). Pursuant to the grievance, McGhie testified that she made an information request to Sokolowski to determine why the unit employees were not being reimbursed for their medical bills. The Alaris Health at Boulevard East facility closed operations in early November 2020. However, McGhie maintained that the grievance is still active and that the Union never received the information requested (Tr. 100, 101, 117, 118).

h. The Testimony of Jennifer Puleo

Jennifer Puleo (Puleo) testified on behalf of the Respondent. She stated that at the time of this complaint, she was the regional vice president of operations for the Alaris Health system, which included the Alaris at Boulevard East facility. Puleo has been the regional vice president since May 2019 and is responsible for various topics arising with the facilities and provided guidance for the administrators and staff. Puleo described the chaotic situation at the Alaris nursing facilities during the COVID-19 pandemic in 2020. She testified that the nursing facilities were faced with changing policies and mandates from the State of New Jersey on the operations of the nursing homes due to the unprecedented state of emergency caused by the pandemic. Puleo also described the suspension of visitations to the nursing homes and the care of nursing residents with dwindling staff resources (Tr. 131–133, 142, 143).

With regard to the bonus memos issued by the Respondent, Puleo testified that she participated in the decision-making for giving out bonuses and also involved when the bonuses were reduced and eventually eliminated. Puleo recalled that another regional vice-president, the executive vice-president, and the owner, Eisenreich, were involved in deciding on giving and reducing the bonuses to the staff at Boulevard East and other Alaris facilities. Puleo testified that she made weekly visits to Boulevard East and recalled seeing the 6 bonus memos posted in

various areas, specifically by the time clock and break room nurses' station. She believed that the memos were disseminated to the employees at Alaris Boulevard East (Tr. 136, 137, 143). Puleo testified that the bonus memos were also disseminated to the Union shop stewards at the Boulevard East facility but is not aware that the memos were discussed with them prior to the issuance of memos (Tr. 156, 157–160).

Puleo maintained that each bonus memo had a start and end date or stated that there would be a further modification of the bonuses. She testified that no employee complained to her when the bonuses were reduced and eliminated because they all knew when the bonuses would end (Tr. 139, 148–150, 160). Puleo stated that she is aware of grievances that may be filed at the Alaris nursing facilities but has not participated in a grievance. She is not aware of any grievances that were filed on the reduction of the bonuses (Tr. 139, 140, 147).

i. The Parties' Stipulation with Regard to Avery Eisenreich

In lieu of having Avery Eisenreich testify at the hearing, the parties agreed and stipulated to the following terms (Tr. 125–127):

1. From about March 1, 2020, through the closing of Alaris Health at Boulevard East in about November of 2020, Avery Eisenreich was the part owner of Alaris Health at Boulevard East and is a supervisor within the meaning of Section 2(11) of the National Labor Relations Act.
2. Avery Eisenreich did not provide a copy of GC Exhibits GC-4, GC-8, GC-11, GC-12, GC-14 or GC-16 to the Union, meaning 1199 SEIU, or to William Massey, Milly Silva, Leilani Montes and/or Sherry McGhie.
3. The memos described in GC Exhibits, GC-4, GC-8, GC-11, GC-12, GC-14 and GC-16 were the same memos at Alaris Health at Boulevard East, as well as the five other Alaris facilities, in which 1199 represents employees in New Jersey (to wit): Alaris Heath at Castile Hill, Alaris Health at Harborview, Alaris Health at Rochelle Park, Alaris Health at the Atrium, and Alaris Health at Hamilton Park.
4. Avery Eisenreich was part of a team at Alaris Health, which included Jennifer Puleo, Linda Dooley, and Chad Giampolo, that decided on the increases that were contained in GC Exhibits GC-4, GC-5, GC-8, GC-11 GC-12, GC-14, GC-16, as well as the decreases contained in those same memos.

DISCUSSION AND ANALYSIS

The counsel for the General Counsel contends that the Respondent violated section 8(a)(5) and (1) of the Act by unilaterally reducing, modifying, and eventually rescinding the wage increases. The Respondent argues that the monetary increases were bonuses that the Respondent had the contractual right to give and rescind within its discretion. It is clear from the above factual findings that the Union consented to the unilateral monetary increases but always reminded Jasinski that further modifications required a notice and opportunity to bargain with

the Union before changes were made. As a defense, the Respondent argued that during this unprecedented time with the COVID-19 pandemic, it made critical decisions on nursing home operations, including to give out bonuses to the staff in appreciation of their commitment and dedication in serving the vulnerable residents at the facilities that was permitted under the expired collective-bargaining agreement (Tr. 131–143).

A. The Respondent did not Violate Section 8(a)(5) and (1) of the Act when it Reduced, Modified and Rescinded the Bonuses

Section 8(a)(5) of the Act requires an employer to provide its employees’ representative with notice and an opportunity to bargain before instituting changes in any matter that constitutes a mandatory bargaining subject. *NLRB v. Katz*, 369 U.S. 736 (1962); *Toledo Blade Co.*, 343 NLRB 385 (2004). The duty to bargain in good faith includes a duty to abstain from unilaterally changing terms and conditions of employment without first bargaining to impasse with the designated representative regarding the changes. *NLRB v. Katz*, 369 U.S. 736, 743 (1962).

The collective-bargaining agreement between the parties expired on March 31, 2014. After a collective-bargaining agreement expires, an employer has a statutory duty to maintain the status quo on mandatory subjects of bargaining until the parties reach a new agreement or a valid impasse in negotiations. See, *Triple A Fire Protection*, 315 NLRB 409, 414 (1994), *enfd.* 136 F.3d 727 (11th Cir. 1998), *cert. denied* 525 U.S. 1067 (1999); *Asociacion de Empleados del Estado Libre Asociado de Puerto Rico*, 370 NLRB No. 71 (2021). The substantive terms of the expired agreement generally determine the status quo. See, *PG Publishing Co., Inc. d/b/a Pittsburgh Post-Gazette*, 368 NLRB No. 41, slip op. at 3 (2019); *Hinson v. NLRB*, 428 F.2d 133, 139 (8th Cir. 1970). The Board may also consider any extracontractual past practices that are “regular and long-standing, rather than random or intermittent.” *Sunoco, Inc.*, 349 NLRB 240, 244 (2007).

The Respondent (previously known as Palisades) and the Union enjoyed a collective bargaining agreement from April 1, 2010, to March 31, 2014 (GC Exh. 2). The “wage increase and minimum rate” section of the contract set forth the hourly increases to the rates of pay of the unit employees and for the hourly increases. However, nothing in this section prevented the Respondent “. . . from giving merit increases, bonuses, or other similar payments provide it gives prior notice to the Union before implementation” (GC Exh. 2 at pp. 11, 12). Massey testified that he is not aware that the Respondent gave out merit increases, bonuses or other similar payments under this section during the life of the agreement or after the expiration of the contract in 2014 to the present time (Tr. 20, 21). Massey’s testimony is not disputed that the bonuses were unprecedented, but that does not diminish the Respondent’s right under the collective-bargaining agreement to give out bonuses upon notice to the Union without having to bargain.

I can well empathize with the chaotic situation in the nursing homes during the COVID-19 pandemic and the constant modifications of operational policies issued by the State of New Jersey on the nursing home industry. Nevertheless, an employer is obligated to provide notice and an opportunity to bargain with the Union on a unilateral change that affects terms and conditions of the unit employees. Changes to payment of wages are mandatory subjects of bargaining. *Strategic Resources, Inc.*, 364 NLRB No. 42, slip op. at 7–8 (2016). Employers

have a duty to bargain with the Union under Section 8(a)(5) of the Act about employees' wages, hours, and other terms and conditions of employment. These terms and conditions are "mandatory" subjects of bargaining. *NLRB v. Borg-Warner Corp.*, 356 U.S. 342, 349 (1958). Bonuses, as payments to employees, are considered wages and therefore a mandatory subject of bargaining. *Lenawee Stamping Corp. d/b/a Kirchhoff Van-Robb*, 365 NLRB No. 97, slip op. at 1 fn. 2 and 8 (2017). Thus, an employer violates its duty to bargain when it makes "a material, substantial, or significant change on a mandatory subject of bargaining without first giving the Union notice and a meaningful opportunity to bargain about the change to agreement or impasse, absent a valid defense." *NLRB v. Katz*, above. A bonus is a term and condition of employment over which an employer must bargain when the bonus was paid regularly and was tied to employment-related factors. *Bob's Tire Co.*, 368 NLRB No. 33, slip op. at 1. (2019).

As noted, it is well established that an employer and the representative of its employees have a mandatory duty to bargain with each other in good faith about wages, hours, and other terms and conditions of employment. *North American Pipe Corp.*, 347 NLRB 836, 837 (2006), petition for review denied 546 F.3d 239 (2d Cir. 2008). The Board has held, however, that employers do not have to bargain about gifts that they give to their employees. *Id.* As the Board has explained, items "given to all employees regardless of their work performance, earnings, seniority, production, or other employment-related factors" are properly characterized as gifts. *Benchmark Industries*, 270 NLRB 22, 22 (1984). Conversely, items that are "so tied to the remuneration which employees receive for their work that [the items] are in fact a part of the remuneration" are properly characterized as wages and are subject to the mandatory duty to bargain. *North American Pipe Corp.*, 347 NLRB at 837. Consequently, it is critical to this determination as to whether the monetary increases were bonuses or wages. If the monetary increases were wage increases, the Respondent would be obligated to bargain with the Union. However, if the monetary increases were bonuses, then there is no obligation to bargain since the bonuses were permitted by the collective-bargaining agreement.

Massey testified to the following as to his interpretation that the monetary increases were a wage increase:

[It's] pretty clear from the Union's point of view, that this was a wage increase. I guess the employer called it a bonus. We considered that to be self-serving. But what they did was there was a percentage wage increase. If somebody made \$10, they were going to \$20. If someone made \$20, they were going to \$40. That's a wage increase.

A bonus, on the other hand, is like in the form of a ratification bonus. You will receive \$500, or you will receive \$100, or you will receive \$250. That's a bonus. And a wage increase is, you know, that the wages were increased by either 100%, or 25%, or whatever the percent was. We viewed them as wage increases.

Q. Okay. So -- and we're going to use hypotheticals here. And I'll use round number. If an employee earned \$10 an hour as a CNA, this bonus for the regular pay would be essentially their regular pay, \$10 an hour, plus the same hours at an additional \$10 an hour, correct?

A Yes.

Q. Okay. And if an employee worked overtime, so they were paid time and a half. And so they earned \$15 an hour, when they worked overtime. You with me?

A Uh-huh.

Q. Okay. So they would receive -- for their overtime hours worked, they would receive 100% bonus of the \$15 an hour. Is that how this was applied?

A. I believe that's how the overtime is applied (Tr. 49, 50).⁷

It is well established that a bonus or gift consistently bestowed for a period of time is considered a component of wages or a term or condition of employment. *Simpson Lee Paper Co.*, 186 NLRB 781, 783 (1970). In *Smi/Divisio of DCX-CHOL Enterprises, Inc.*, 365 No. 152 (2017), the Board found that the \$100 bonus was a form of compensation subject to a mandatory duty to bargain, and since the employer did not fulfill its duty to bargain with the Union before implementing the \$100 bonus, the employer violated Section 8(a)(5) and (1) of the Act when it unilaterally implemented the bonus. In *Ohio Edison Co.*, 362 NLRB 777, (2015), the Board held that a bonus paid on the basis of an employee's performance on the job constitutes part of an employee's compensation, rather than a gift, requiring an obligation to bargain.

In determining whether a bonus constitutes a term and condition of employment over which an employer must bargain, the Board considers both the regularity of the bonus and whether payment of the bonus was tied to employment-related factors. See, e.g., *North American Pipe Corp.*, above; *Bob's Tire Co.*, 368 NLRB No. 33 (2019). The Board has held, however, that employers do not have to bargain about gifts that they give to their employees. *Id.* As the Board has explained, items "given to all employees regardless of their work performance, earnings, seniority, production, or other employment-related factors" are properly characterized as gifts.

In applying the Board's guidance, I find that the monetary increases were gifts and not wage increases. The bonuses were for a specific period of time and not conditioned upon employment-related factors. If indeed this was a wage increase as contended by the General Counsel and the Union, the so-called wage increases without benefit of robust negotiations between the parties, would have resulted in a significant and substantial windfall to the unit employees. As Massey testified, an employee receiving a 100 percent increase in a \$10 per hour situation will now receive \$20 dollars per hour. It is difficult to believe the Union seriously thought there was an increase of 100 percent in hourly wages and that the increase was not in fact a gift in the form of a bonus. Here, taking the monetary formula used by the counsel for the General Counsel, a unit employee at Alaris who was earning \$50,000 and applying the 100

⁷ Contrary to the position of the union, a bonus does not necessarily need to be a specific dollar amount and a percentage of the hour worked may equally be considered a bonus and not a wage increase. Wage increases in collective-bargaining agreements can also be bargained for specific dollar amounts and not with percentages (see e.g., *Wilkes-Barre Behavioral Hospital Co. LLC*, 583 NLRB 1, 19 (2019)(discussing wage increase proposals going up \$1.77 per hour).

percent increase, will now see an annual earned income of \$100,000 dollars for the duration of that worker's employment (except for the fact that the facility ceased operations).⁸

Upon my review of the memos, I find that each memo stated that the monetary increases were called "COVID-19 hourly rate bonus" and each reduction was prefaced as "bonus reductions." Each memo stated that the monetary increases were bonuses and given during the COVID-19 crisis and pandemic. Each bonus was specific as to the amount, eligibility, and the temporary nature of the bonus. The bonus was for thirty days or had a specific start date and end date. None of the monetary increases were tied to performance, seniority, production, attendance or dependent on the gross profits of the facility. Each bonus memo had a provision which stated the parties would revisit the bonus and respond based on the circumstances with the COVID-19 pandemic. Prior to the implementation and expiration of the bonus, the Respondent's facility distributed follow-up memos for the succeeding designated time (See, also, Respondent's brief at 6). A review of the series of memos issued by the Respondent substantiates the arguments of Respondent's counsel,

The memo dated April 1 and effective April 2, specifically has an end date of at least April 30. None of the Respondent's staff was excluded: "All of Respondent's staff working in all Alaris centers, received a special COVID19 hourly rate bonus equal to 25% of their current hourly rate." The bonuses were tied to the COVID-19 pandemic situation and not employment factors. The hourly bonuses were not dependent on job performance and applied to all worked hours thru April 30 (GC Exh. 4).

The memo dated April 7 gave all nursing and respiratory staff COVID19 hourly rate bonus equal to 100% of their currently hourly rate, effectively immediately and through April 30. Again, the bonuses had an end date and were not based upon performance or tied to any seniority, earnings or production of the workers. The hourly bonus applied to all worked hours (GC Exh. 8).

The April 29 memo and made effective on May 1, gave a 100 percent bonus to the nurses, CNA's and respiratory therapists on April 7 and was reduced to a 25 percent hourly bonus for hours worked through May 14, making the reduction consistent with the bonus received by all staff. Again, the bonus reduction was not based upon performance factors and applied equally to all job categories. The memo further provided there would be updates prior to May 14 for updates on the bonuses.

The May 13 memo was a follow-up to the April 29 memo and stated there would be a reevaluation of the bonus payments. The memo stated that starting on May 17, the 25 percent bonus payment for hours worked will be limited to "Direct Nursing Providers" only, which included all RNs, LPNs, CNA's, and QA CNAs. The 25 percent bonus for Direct Nursing Providers will continue until May 31, 2020. All other employees were informed that their normal hourly rate will resume as of May 17 (GC Exh. 12). Again, the May 13 memo provided specific start and end dates for

⁸ It is noted that the facility ceased operations about November 14, 2020, the date when the backpay period ended as contended by the General Counsel (GC Exh. 21).

the bonuses and applied equally to all job categories without regard to performance, seniority or production of the employee.

The May 29 memo referenced the May 13 memo and stated there would be further modifications of the bonus payment by May 31. As such, the May 29 memo stated that the 25 percent bonus to RNs and LPNs will be reduced to 10 percent effective on June 1 through June 15. The May 29 memo also stated that the RNs and LPNs would return to their tradition pay rate after June 15 (GC Exh. 14). This bonus to the RNs and LPNs had both a start date and an end date.

Finally, the Respondent's July 20 memo informed the CNAs that the 25 percent bonus for hours worked reflected in the May 29 memo will now be reduced to \$1.50 extra per hour for all hours worked, effective on July 26 (GC Exh. 16).

Here, the record shows that the Respondent paid its employees a cash bonus based on a percentage of their hour worked from April 1 to July 26. The memos were silent as to whether the bonus was tied in any way to employment-related factors. Indeed, the memos specifically mentioned that the bonuses were provided to all staff and given for their dedication and commitment during the COVID-19 pandemic. Upon the lessening of the crisis in the nursing facilities, the Respondent felt that the bonuses were no longer needed. In the absence of additional and more specific evidence that the bonuses were tied to any employment-related factors, there is no basis to find that these payments were anything more than gifts over which the Respondent was not required to bargain. See *Harvstone Mfg. Corp.*, 272 NLRB 939, 939 fn. 1 (1984) (employer did not violate the Act by discontinuing Christmas bonus given for 10 years, where bonuses were in the nature of gifts rather than terms and conditions of employment). In that case, the judge cited in support *Waxie Sanitary Supply*, 337 NLRB 303 (2001), and *Sykel Enterprises*, 324 NLRB 1123 (1997). The Board found that the judge's reliance on these cases is misplaced, as both cases included evidence establishing that the holiday bonus at issue was clearly a term and condition of employment. In *Waxie Sanitary Supply*, the amount of each employee's bonus was a specified percentage of the employee's annual salary, and that percentage depended on the employer's gross profits for the year. 337 NLRB at 304. In *Sykel Enterprises*, the employer considered the employee's attendance and performance in determining the bonus amount. 324 NLRB at 1124. Here, as mentioned above, the only consideration for the bonuses was the COVID-19 pandemic on the staff and not tied to any employment-related factor.

In *Dura-Line Corp.*, 366 NLRB No. 126 (2018), the complaint alleged that the Respondent unilaterally reduced the card amount from \$25 to \$16 in violation of Section 8(a)(5) and (1) of the Act. The judge agreed, finding that the Respondent had established a past practice of providing \$25 cards and was obligated to bargain over the change to the \$16 cards. The Board disagree and found that the extra \$9 value of the \$25 gift cards constituted gifts not subject to mandatory bargaining. The Board held that items given to all employees on an equal basis without regard for individual work performance, earnings, seniority, production, or other such factors, as here, are gifts and are not mandatory bargaining subjects.

In *Bob's Tire Co.*, 368 NLRB No. 33 (2019), the Board reversed the judge and found that the employer did not violate the Act when it ended the annual Christmas bonus after several

years without notifying the Union. The Board held that in determining whether a bonus constitutes a term and condition of employment over which an employer must bargain, “. . . the Board considers both the regularity of the bonus and whether payment of the bonus was tied to employment—related factors.” Here, the bonuses given by the Respondent was not tied to any employment-related factors. The bonuses did not account for the facility achieving stellar production or profits. They were not tied to job performance, attendance or seniority of the worker. The bonuses were implemented to show appreciation to the staff when the COVID-19 pandemic started in March 2020 and the bonuses were ended when the pandemic lessened in summer 2020.

As such, I find that the Respondent had no obligation to negotiate over the bonuses since they were not wage increases requiring a requirement to bargain with the Union.

B. The Respondent Provided Prior Notice before the Implementation and Reduction/recission of the Bonuses.

The remaining issue is whether the Respondent provided prior notice before the implementation and reduction/recission of the bonuses. As argued by the Respondent: “That subject (bonuses) was negotiated and the right was given to the Employer in Section 10 Paragraph B of the CBA. The CBA merely required notice—nothing more” (R. Br. at 6). The Respondent maintains that the Union delegates at the Alaris facilities were provided with copies of the memos as notice to the Union of the bonuses pursuant to the expired contract (Tr.156–160). As noted above, the expired collective-bargaining agreement states in section 10, para. (B) that,

“wage increase and minimum rate” section of the contract set forth the hourly increases to the rates of pay of the unit employees and the hourly increases. However, nothing in this section prevented the Respondent “. . .from giving merit increases, bonuses, or other similar payments provide it gives prior notice to the Union before implementation” (GC Exh. 2 at pp. 11, 12).

Here, by the terms of the collective-bargaining agreement, the parties negotiated and agreed that the Respondent had the right to implement bonuses to the employees. The only obligation was to provide notice. I find that the Respondent was not required to provide written notice or to contact a designated and specific representative at the Union. I also find that this section of the agreement did not designate an address for service to the Union or the method of service of the notice. As such, so long as conveying the notice is reasonable, there is no requirement that the notice must be conveyed directly to McGhie, Montes, or Massey and that there is no requirement as to how the notice is to be conveyed to the Union.

McGhie testified that she was the administrator and organizer for the Union at the Alaris Boulevard East Hamilton Park, Harborview, Rochelle Park, and Castle Hill during the COVID-19 spring 2020. McGhie reported directly to Leilani Montes, her supervisor and vice-president at the Union (Tr. 104).

I find the testimony of McGhie to be critical in determining whether notice was given to the Union. To be sure, it is not disputed that the Union through McGhie did not have access to the facility due to the state-wide “stay at home” policy in New Jersey and the prohibition of visitors at the State’s nursing homes. As such, McGhie testified that she was dependent on the union delegates working at the Alaris Boulevard East facility and other Alaris-owned facilities for information (Tr. 118, 119). At the time, the union delegates at Alaris Boulevard East were Rosa Azias and Vicky Nieves.

On April 1, 2020, Alaris implemented a limited duration bonus for unit employees. McGhie testified that she received the April 1, 2020 memo (GC Exh. 4) on the same date from a unit employee, Gwen Russell, who worked at the Alaris Harborview and is a union delegate (Tr. 111). McGhie testified she received a picture of the memo on her cell phone sent by Russell.⁹ McGhie forwarded the screenshot of the memo to her supervisor, Leilani Montes, who was the union vice-president at the time (Tr. 105). McGhie testified that she did not receive the April 7 memo (GC Exh. 8). However, McGhie saw and received the April 29 memo (GC Exh. 11), which was the follow-up to the April 7 memo. McGhie stated that she received a screenshot of the April 29 memo from Russell and again forward the memo to her supervisor Montes (Tr. 106, 107). McGhie further testified she received a copy of the May 13 memo from Russell, again via a screenshot on her phone and forwarded a text with a picture of the memo to Montes (Tr. 110). On about the same time, McGhie also received the May 29 memo from union delegate Mary Moise at the Rochelle Park facility and again forward the memo to Montes (Tr. 111). McGhie also received the final July 20 memo from Moise, approximately 2 or 3 days after the memo was issued (Tr. 112).

While McGhie was not sure, she did testify of having received at least one, possibly two, memos from Azias at the Alaris Boulevard East facility. The second delegate at Boulevard East, Nieves, was unavailable due to contracting COVID-19 for approximately 5 week (Tr. 109, 113). However, McGhie did receive the same memos from delegates at other facilities. McGhie admitted that she had received the April 1 notice from Russell and forwarded the memo immediately to Montes; that she received the April 29 memo from Russell on April 29 and forwarded the memo to Montes; that she received the May 13 memo and sent it over to Montes on the same day; and received the May 29 memo about June 10 and the July 20 memo from Moise and forwarded that memo to Montes within 3 days (Tr. 122–124, 112).

Upon review, of the 6 memos that were issued by the Respondent regarding the bonuses, McGhie received 5 of the memos from delegates Azias, Russell, or Moise. Receipt of the memos by McGhie was immediate, almost always the same day or shortly thereafter the notice was posted. I find that Puleo credibly testified that the memos were posted at the facilities and that the Union delegates had received the memos (Tr. 156–160). I credit her testimony simply because it cannot be disputed that either the memos were posted by the Respondent at all the facilities, including Boulevard East, or that the memos were distributed to the union delegates since it would behoove me to question how else would the union delegates received the actual memos that they texted to McGhie?

⁹ It has not been disputed that the memos received from Russell and other delegates at the other Alaris facilities were different from the memos issued at the Boulevard East facility. Indeed, the parties stipulated that the memos were identical in all six Alaris facilities (Tr. 125–127).

The one memo that McGhie did not receive was the April 7 memo (GC Exh. 8). However, that deficiency was corrected when McGhie received the follow-up memo on April 29 that described in detail the April 7 memo (GC Exh. 11). I would also note as significant that the April 7 memo that McGhie said she did not receive only pertained to the nursing and respiratory therapy staff, two job categories that are not part of the represented unit employees (GC Exh. 11). McGhie and the Union would not routinely receive notice regarding this group of employees. As such, the Union, through the delegates and subsequently through McGhie and Montes, received notice of the bonuses and the subsequent modifications and rescission consistent with section 10 (para. B) of the collective-bargaining agreement.

Accordingly, I find that the Respondent did not unilaterally rescinded, reduced, and discontinued the alleged wage increases in April 2020 in violation of Section (a)(5) and (1) of the Act.

C. The Respondent Failed to Provide the Information Requested in Violation of Section 8(a)(5) and (1) of the Act

The General Counsel also alleges that since about September 4, 2020, the respondent has failed to provide certain information requested by the Union relating to a grievance it filed over the nonpayment of medical bills of its unit employees. The Respondent generally denied this allegation but offered no witness testimony or written evidence contrary to the charge alleged by the General Counsel.

An employer has a duty to furnish relevant information when requested by a union under Section 8(a)(5) and (1) of the Act, and this encompasses information necessary for the performance of its duties. See *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 156 (1956). An employer is obligated to provide a union with requested information that is “potentially relevant and would be of use to the union in fulfilling its responsibilities as the employees’ bargaining representative.” *E.I. Du Pont*, 366 NLRB No. 178, slip op. at 4 (citing *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435–436 (1967) and *Postal Service*, 332 NLRB 635, 635 (2000)). In evaluating relevance, the Board uses a “liberal, discovery-type standard” that requires only that the requested information have “some bearing upon” the issue between the parties and be “of probable use to the labor organization in carrying out its statutory responsibilities.” *Id.* (quoting *Public Service Co. of New Mexico*, 360 NLRB 573, 574 (2014), and *Postal Service*, 332 NLRB at 636).

Information concerning terms and conditions of employment of employees represented by a union is generally presumed relevant to the Union in its role as a bargaining representative. Thus, information requested will be considered relevant when it would assist the Union in evaluating the merits of a grievance and the propriety of pursuing that grievance to arbitration. *Acme Industrial Co.*, 385 U.S. 432, 437–438 (1967) (employer’s duty to furnish requested information constitutes obligation standing “in aid of the arbitral process,” in that it permits union to evaluate grievances and sift out unmeritorious claims). The Board, in determining that information is producible, does not pass on the merits of a grievance underlying an information request. See *Id.* Where the information requested is not presumptively relevant, “it is the union’s

burden to demonstrate relevance.” *Postal Service*, 332 NLRB 635 at 636 (2000). The Union’s burden to demonstrate relevance is not heavy, but it does require “demonstrating a reasonable belief supported by objective evidence that the requested information is relevant, unless the relevance of the information should have been apparent to the Respondent under the circumstances.” *Id.*; see also *A-1 Door & Building Solutions*, 356 NLRB 499, 500 (2011).

As stated above, on about September 4, the Union filed a class action grievance on behalf of the unit employees at Alaris for unpaid medical invoices and the cancellation of their health insurance benefits. The email referring to the grievance was sent by McGhie, a union organizer, to Sokolowski, the administrator at the Alaris nursing facility (GC Exh. 18). The Union requested the following information on the pending grievance:

1. The files that show names and date of member covered as of March 1, 2020.
2. The summary plan and description for health insurance.
3. The summary benefit description for health insurance.

Union counsel, Massey, followed up on McGhie’s September 4 email with his own email to Jasinski on September 23. Attached to Massey’s email to Jasinski was the information request from McGhie to Sokolowski (Tr. 61-63; GC Exh. 19). McGhie testified that the Union filed the grievance because unit members had been accumulating hospital bills that were not being paid by their health insurance. McGhie said she gave copies of the hospital invoices to administrator Sokolowski but received no response from her or any other management official (Tr. 113, 114). Pursuant to the grievance, McGhie testified that she made an information request to Sokolowski.

I find that the information requested pertaining to the unit employees’ health insurance benefits as presumptively relevant and may be necessary for the Union to advocate its represented members at the pending grievance. See, *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435–436 (1967). The requested information was presumptively relevant to the filing of the grievance so that the Union can determine how many unit employees were covered and to ascertain whether there were changes in the health insurance plan that now no longer allowed for coverage and reimbursement for certain medical expenses.

To be sure, assuming the information requested is not presumptively relevant, this is not the situation where the Union failed in its burden to demonstrate the relevance of the requested information. The Board has long held that “generalized, conclusionary explanation is insufficient to trigger an obligation to supply information.” *Island Creek Coal*, 292 NLRB 480 at 490 fn. 19; *Soule Glass & Glazing Co. v. NLRB*, 652 F.2d 1055, 1099 (1st Cir. 1981); *FCA US LLC*, 371 NLRB No. 32 (2019). However, here, I credit McGhie’s testimony that the information was needed by the Union to determine the reasons why the unit employees were not being reimbursed for their medical bills. This information would, of course, assist the Union in the preparation of the grievance proceeding. The Union requested that the Respondent provide the information by September 14. I find Massey credibly testified that the Union did not receive a reply on the information request from Sokolowski and he did not receive a response from Jasinski (Tr. 63, 64). Although Alaris Health at Boulevard East facility closed operations in early November 2020, it is undisputed from McGhie’s testimony that the grievance is still active and that the Union never received the information requested (Tr. 117).

Accordingly, I find that the Respondent violated Section 8(a)(5) and (1) of the Act when it failed and refused to provide the Union with the information requested by September 14, 2020.

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CONCLUSIONS OF LAW

1. At all material times, the Respondent Alaris Heath at Boulevard East is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. 1199 SEIU United Healthcare Workers East (the Union) is a labor organization within the meaning of Section 2(5) of the Act
3. At all material times, the Union has been the designated exclusive collective-bargaining representative of Respondent's employees, in the following appropriate unit:

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All CNAs, dietary, housekeeping, recreational aides, cooks, and all other employees excluding professional employees, registered nurses, LPNs, confidential employees, office clerical employees, supervisors, watchmen and guards.

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4. The Respondent violated Section 8(a)(5) and (1) of the Act when it failed and refused to provide the Union with the information requested by September 14, 2020.
5. The unfair labor practices described above affect commerce within the meaning of Section 2(6) and (7) of the Act.
6. The Respondent did not violate Section 8(a)(5) and (1) of the Act when it is alleged that the Respondent unilaterally implemented and subsequently reduced and eliminated the alleged wage increases without notice and an opportunity to bargain with the Union.

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REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, I recommend that the Respondent having unlawfully failed and refused to provide the information to the Union that is relevant and necessary to the performance of its duties as the exclusive collective-bargaining representative and/or failed to inform the Union that certain information requested did not exist, shall be ordered to supply the requested information to the Union, or make such representation to the Union that the information requested does not exist. In addition, the Respondent shall post an appropriate informational notice, as described in the attached appendix.

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ORDER

On these findings of facts and conclusions of law and on the entire record, I issue the following recommended¹⁰

The Respondent, Alaris Health Boulevard East, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to provide information to the Union that is relevant and necessary to the performance of its duties as the exclusive collective-bargaining representative of its employees in the following appropriate unit:

All CNAs, dietary, housekeeping, recreational aides, cooks, and all other employees excluding professional employees, registered nurses, LPNs, confidential employees, office clerical employees, supervisors, watchmen and guards.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish to the Union, in a timely and complete manner, the following information, or, to the extent such information does not exist, so inform the Union:

1. The files that show names and date of member covered as of March 1, 2020.
2. The summary plan and description for health insurance.
3. The summary benefit description for health insurance.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

(c) Within 14 days after service by the Region, post at the existing Alaris Health facility at Boulevard East located in Guttenberg, New Jersey, copies of the attached notice marked "Appendix."¹¹ Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an

¹⁰ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

¹¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent had

gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 14, 2020. (d) Within 21 days after service by the Region, file with the Regional Director for Region 22, a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent have taken to comply.

Dated, Washington, D.C. January 26, 2022



Kenneth W. Chu
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefits and protection
Choose not to engage in any of these protected activities.

WE WILL NOT fail to provide information to the Union that is relevant and necessary to its performance of its duties as your exclusive collective-bargaining representative.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL furnish to the Union, in a timely and complete manner, the following information:

1. The files that show names and date of member covered as of March 1, 2020.
2. The summary plan and description for health insurance.
3. The summary benefit description for health insurance.

To the extent such information does not exist, WE WILL timely inform the Union of that fact.

ALARIS HEALTH AT BOULEVARD EAST
(Employer)

Dated _____ By _____
(Representative) (Title)
Alaris Health at Boulevard East

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

National Labor Relations Board Region 22
20 Washington Place, 5th Floor
Newark, New Jersey 07102
Hours of Operation: 8:30 a.m. to 5 p.m.
973-645-2100

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/22-CA-268083 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 973-645-2100.